

## General Conditions: direct2home

These General Conditions apply to contracts (e.g. signed order forms) in which A1 Telekom Austria Aktiengesellschaft (abbreviated: "A1") and A1's CUSTOMER agree to have them applied. Whenever such contract differs from the General Conditions the provisions of the contract will prevail. These contracts will usually also refer to a service description. Such service description will prevail over these General Conditions as well.

### 1. Definitions

Due Date shall be the day defined in 5.3.

Initial Term (sometimes also referred to as "Commitment") shall have the meaning as set out in 2.1.

Intellectual Property Rights denotes any patent, copyright, trademark, trade name, service mark, moral right, design right, database right, know how, design right, and any and all other intellectual property rights whether registered or not or capable of registration and whether subsisting in Austria or any other part of the world.

Notice shall have the meaning as set out in clause 22.

RFS-DATE shall denote the date on which A1 provides the ordered Service ready for immediate use by CUSTOMER provided, however, that if CUSTOMER gives Notice to A1 of a malfunction of the Service within no more than 5 Working Days after having been provided with such Service the RFS-DATE for this Service shall be the date on which this malfunction is remedied.

Working Day shall be any day from Monday to Friday which is not December 24<sup>th</sup>, Good Friday or national holiday in Austria or in any of the destination or transit countries of the ordered Service. National holidays in Austria are: January 1<sup>st</sup> and 6<sup>th</sup>, May 1<sup>st</sup>, August 15<sup>th</sup>, October 26<sup>th</sup>, November 1<sup>st</sup>, December 8<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup>, Easter Monday, Ascension Day, Whit Monday, Corpus Christi Day.

### 2. Term and Termination of Contracts

#### 2.1. Term

Contracts governed by these General Conditions shall be entered into for a minimum committed term (hereinafter: Initial Term) of 3 years starting on the RFS-DATE. After the expiry of the Initial Term such contracts shall continue until terminated for cause or for convenience.

#### 2.2. Termination for Convenience

Each Party may terminate the contract at the end of each calendar year by giving 6 months' prior Notice. Notice of termination for convenience given prior to the expiry of the Initial Term will not terminate the contract prior to the expiry of the Initial Term.

#### 2.3. Termination for cause

Each Party may terminate the contract with immediate effect for cause if any of the following applies:

(a) insolvency proceedings against the other Party are started and the other Party's business is not continued (information given by the liquidator shall be sufficient, no court decision on closing down the business is needed) or

(b) insolvency proceedings against the other Party are started and termination of the contract will not endanger the insolvent Party's efforts to stay in business or

(c) even though no Insolvency proceedings against the other Party are started: the other Party falls bankrupt or generally stops paying its creditors or loses its financial soundness or loses so much of its financial standing that proper continuation of business is harmed or made impossible or

(d) the other Party fails to fulfil any of its material obligations (including failure to cure the cause of a suspension) and such failure is not remedied within 7 days from having received a request for remedial action or

(e) any force majeure lasts at least 20 days in a row or

(f) in the event of a limitation of the same data stream of the Service for 7 days or more, the CUSTOMER shall be entitled to terminate the Service.

### **3. Suspension**

If CUSTOMER's facilities or systems adversely affect the normal operation of A1's facilities or systems or is a threat to any person's safety, A1 may immediately suspend its Service to the extent necessary and for the period until the normal operation of its facilities and/or systems or reduction of the threat to safety is ensured. Notice on such suspension shall be given without undue delay; however, in such special case Notice does not have to be given prior to suspension.

Notwithstanding 2.3 if a CUSTOMER is in curable material breach (including failure to pay any undisputed amount due) of a contract A1 will ask to have the breach remedied within a reasonable curing period during which A1 may suspend its Service as reasonable.

A1 may also suspend the SERVICE within 1 (one) hour of A1's request ...

- if some or all data streams violate international public order, national public order or the laws of the countries or territories in respect of which the data stream is accessible or transmitted; and/or
- if the relevant broadcasting license of CUSTOMER in respect of any transmission or programming is revoked or provisionally suspended; and/or
- if the activity of CUSTOMER is deemed to be illegal; and/or
- if A1 or the provider of the space segment risks incurring civil and/or criminal liability, as a result of the continued broadcasting of any programming, content or transmissions via the Service; and/or
- if CUSTOMER or A1 is (or is controlled by) an entity subject to restrictive measures (e.g. embargo) under any EU, UN or other applicable regulation.

During any suspension, no indemnity whatsoever shall be due by A1, and none of CUSTOMER's payment obligations shall be harmed or diminished by a suspension. CUSTOMER hereby holds A1 harmless from any and all liability arising therefrom, it being specified that these suspensions shall be deemed attributable to CUSTOMER.

### **4. Fees**

#### **4.1. Net Amounts and Currency**

All amounts in money are expressed in Euro and exclusive of any VAT or any other tax. A1 shall invoice all amounts in Euro and CUSTOMER shall settle all invoices in Euro.

#### **4.2. One time charges**

If set out in the contract CUSTOMER shall pay non-recurring charges.

#### **4.3. Recurring Charges**

If set out in the contract CUSTOMER shall pay a monthly recurring charge for the Service. The Parties shall agree on this charge in the respective contract.

The recurring charge shall begin to accrue on the day after the RFS-DATE of such Service and shall stop accruing when the contract for that Service ends. Whenever the RFS-DATE is the last day of a calendar month or the Service ends prior to the last day of a calendar month A1 will charge 1/30<sup>th</sup> of the monthly recurring charge for each calendar day the Service is provided during such incomplete calendar month.

#### **4.4. Charges based on the number of active CAS cards (pay as you grow)**

If set out in the contract CUSTOMER shall pay charges based on the number of active CAS cards.

Each calendar month these charges will be calculated based on the number of CAS cards active on the 15<sup>th</sup> day of that calendar month. In the event of database deviations these charges will be the average of these amounts charged for the previous 3 calendar months.

### **5. Billing**

#### **5.1. Invoices sent by email**

A1 emails all invoices (in pdf format) to a defined email address.

#### **5.2. Billing of Contractual Fees**

Non recurring charges will be invoiced after they have been agreed (or whatever other due date has been fixed in the order form). Beginning at the start of the Service the recurring charges will be invoiced monthly in advance. Subscriber based fees will be invoiced monthly.

#### **5.3. Due Date**

Due Date shall be the 30<sup>th</sup> day following the invoice date. If CUSTOMER receives an invoice later than 15 days after the invoice date and proves the date of receipt to A1 the Due Date shall be the 15<sup>th</sup> day following the receipt of the invoice.

#### **5.4. Payment**

Payment shall be made to any of A1's bank accounts as set out in A1's invoices.

CUSTOMER's payments need to be received in full (i.e. clear of all bank charges, commissions or other charges) no later than on the Due Date.

#### **5.5. Payment Details to Be Given**

CUSTOMER shall inform A1 on all details (e.g. invoice number, invoice period) to allocate CUSTOMER's payment. Information shall be given either by way of Notice or by e-mail.

Payment received without such information has to be credited against the longest outstanding debt manually. Hence, in such case no debt shall be deemed settled until A1 has completed such manual crediting.

#### **5.6. Complaints Concerning Invoices**

Within 30 days after having received an invoice CUSTOMER may raise a complaint against an invoiced amount. An invoiced amount shall be deemed accepted if no complaint is raised within that period.

A complaint on any amount invoiced shall be given by form of Notice and shall include all information needed to understand to which amount the complaint refers to, why the complaint is raised and which evidence supports the complaint. All complaints shall be answered within a period of 30 days from receipt of the complaint.

The Parties will use reasonable and good faith efforts to resolve invoice disputes within 30 calendar days upon receipt of Notice. In the event the complaint is not resolved within 30 days CUSTOMER may name its executive level officer and A1 will do the same so that the matter may be dealt with by the Parties' executive-level officers. Should these two executive-level officers fail to resolve this complaint within 15 days of its referral either Party may start proceedings as set out in clause 19.

If the complaint is justified A1 shall make all relevant corrections in a subsequent invoice or issue a credit note. Presentation of the complaint shall not release the complaining Party of the obligation to make all payments by the Due Date.

**5.7. Interest**

CUSTOMER shall pay interest on overdue amounts at a yearly rate of 16%.

**5.8. Cost of Debt Collection**

CUSTOMER shall reimburse A1 for reminder and collecting expenses resulting from CUSTOMER's delayed performance (if any) of its contractual duties.

**6. Set Off**

A1 may set-off amounts payable by CUSTOMER against amounts due to CUSTOMER, provided A1's claims used for set-off are due, have not become barred by applicable statute of limitations at the moment CUSTOMER's claims (against which A1 wishes to off-set) emerged and are of the same kind as CUSTOMER's claims (eg: both A1's and CUSTOMER's claims are in money).

**7. Taxation**

A1 will charge VAT if and to the extent applicable provisions provide so. All Services hereunder are telecommunication services under EU-VAT law: No Austrian VAT shall be charged to CUSTOMER if CUSTOMER is registered for VAT purposes outside of Austria and if CUSTOMER provides A1 with a certificate confirming that CUSTOMER fulfils the legal prerequisites for the reverse charge procedure. A1 will provide the CUSTOMER with a suitable draft for such a VAT certificate, see clause 8.

If CUSTOMER is required by law to deduct or withhold any taxes or fees from any amounts due, such amounts shall be increased as necessary so that A1 receives an amount equal to the sum it would have received if no such deduction or withholding had been made. A1 is a registered provider for telephone and telecommunication services in Austria. CUSTOMER acknowledges that all payments to A1 will be made without the need of receiving further documents or confirmations.

Each Party shall be responsible for the payment of any taxes, duties and governmental fees, including state, federal and local personal and business income taxes, sales and use taxes, other business taxes and license fees arising out of its activities. All taxes, duties (including stamp duty) and governmental fees triggered by these General Conditions or any contract on a Service shall be borne by CUSTOMER.

**8. Draft VAT Certificate**

<i>Customers outside the European Union</i>	<i>Customers within the European Union, but outside of Austria</i>
Please <u>attach overleaf</u> a certificate of CUSTOMER's registration of as a taxable person (i.e. the confirmation of the CUSTOMER's	VAT identification number: ____

<p>tax authority, that the CUSTOMER is engaged in economic activities, for details see Council Directive 86/560/EEC)!</p> <p>In case there is no such document please provide VAT number, Enterprise Identification Number, Tax/Sales GST Identification Number or at least any other identical official registration number used for commercial and business purposes: ____</p>	
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*The rest of the VAT certificate applies, no matter if customers are inside or outside the European Union:*

CUSTOMER's company name: \_\_\_\_

CUSTOMER's registered address: \_\_\_\_

The services we receive from A1 Telekom Austria Aktiengesellschaft are for our business use only.

Our central administration and registered office and management meetings are/take place outside of Austria. We do not run a fixed establishment (as defined in Art 11 number 1 of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011) in Austria.

However, in case we do run a fixed establishment in Austria we certify that this fixed establishment does not receive and use Services from A1 Telekom Austria Aktiengesellschaft in Austria.

In case of changes to the above we shall inform A1 Telekom Austria Aktiengesellschaft immediately.

Signed on this \_\_\_\_\_ (fill in date) in \_\_\_\_\_ (fill in place)

Signature: \_\_\_\_\_ (name + position)

**9. Provision of Financial Information**

Upon the request of A1, CUSTOMER shall provide financial statements, credit reports and other information to determine its credit worthiness as well as any information on its identity and legal and contractual capacity.

**10. CUSTOMER rights in the content**

CUSTOMER ensures to be entitled to have the data streams (including the EPG) broadcast via satellite to the countries where the transport stream can (technically) be accessed and consumed by subscribers.

In case CUSTOMER does not own the broadcasting rights for all countries of the region covered by the agreed satellite, the CUSTOMER will (a) only provide CAS cards to subscribers in those countries which are covered by the CUSTOMER's rights and (b) order digital rights management services to be applied to the respective data streams.

The same applies if CUSTOMER wishes to have data streams broadcast to a country where such content has to comply with certain channel restrictions: Programs that may seriously impair the physical, mental or moral development of minors (e.g. programs containing scenes of a pornographic nature or depicting gratuitous violence) may only be broadcast between the hours of midnight and 5 a.m., they need to have digital rights management applied and CAS cards may only be given to adults in the countries covered by the CUSTOMER's rights.

The CUSTOMER must not provide any content for broadcasting which violates national or international public order or the laws of the countries or territories in respect of which said transmission, programming or broadcasting is accessible or transmitted or which puts A1 or the satellite owner at risk of civil and/or criminal liability. CUSTOMER shall not use Services unless in accordance with and subject to all provisions of applicable law.

The CUSTOMER holds A1 harmless from any action, injunction, allegation, or proceeding or damages brought by or reclaimed by any third party, including inter alia by any competent national or international authority, based on the information and/or content transmitted.

#### **11. Independence of CUSTOMER's Agreements**

Nothing herein shall restrict CUSTOMER in selling to third parties some or all of the Services CUSTOMER acquires from A1.

CUSTOMER shall independently set and charge its own fees. Nothing herein shall imply any obligation of A1 towards any such clients or customers of CUSTOMER.

#### **12. No Partnership**

Nothing herein shall be deemed or construed to constitute a partnership, agency, or joint venture between the Parties.

Neither Party shall be or represent itself to be an employee, agent, representative, partner or joint venturer of the other. Neither Party shall have the right, authority or power to assume or create any obligation on behalf of or in the name of the other or to otherwise act on behalf of the other Party.

Each Party shall at all times remain an independent contractor fully responsible for its own acts or defaults, including those of its employees or agents.

#### **13. Authorisations**

Each Party has obtained all permits, approvals, consents, authorisations, registrations, consultations, notifications and licenses required by to perform its obligations hereunder ("Authorisations"). This includes the relevant broadcasting license which needs to be obtained by the CUSTOMER.

The Parties shall obtain and maintain all Authorisations.

Both Parties shall keep the other Party informed on restrictions included to the Authorisations.

#### **14. Force Majeure**

An event shall be deemed force majeure if it makes it impossible for a Party to fulfil its contractual obligations and if such Party could not reasonably have anticipated the event also cannot control the event. A Party shall not be deemed in default or breach of any of its obligations if and to the extent that performance of such obligation is prevented or delayed by force majeure.

The Party struck by force majeure shall without undue delay give Notice thereof (as well as of any ceasing of force majeure) to the other Party and it shall use all reasonable endeavours to avoid or minimise the effects of force majeure.

Once force majeure lasts for a continuous period of 20 days the other Party shall be entitled (but not obliged) to terminate the respective contract on a Service immediately by giving Notice (i.e. without having to adhere to a Notice period, a termination date or an Initial Term).

#### **15. Assignment**

CUSTOMER may not in whole or in part assign rights or obligations without the prior written consent of A1 which shall not be unreasonably delayed or withheld. A1 may assign any or all

of A1's rights, interests or obligations to any affiliated company in its group provided, however, that A1 gives Notice thereof to CUSTOMER.

Any assignment without the required consent shall be void.

## **16. Waivers**

No failure or delay by either Party in exercising any right, power or remedy shall operate as a waiver of any such right, power or remedy.

The waiver by either Party in whole or in part of a breach of or a default, or the failure, in whole or in part, of the other Party, upon one or more occasions, to enforce any agreed upon provision or to exercise any agreed upon right or privilege shall not thereafter be construed as a waiver of any subsequent breach or default of a similar nature or as a waiver or any such provision, right of privilege hereunder.

## **17. Liability and Indemnity**

### **17.1. Unlimited Liability**

Nothing shall exclude or limit either Party's liability (a) for fraud or death or personal injury caused by its negligence or (b) under applicable provisions on product liability.

Also any obligation to pay unpaid invoices or to grant credits shall and shall in no way be limited by this clause 17.

### **17.2. Limited Liability**

Save as provided in 17.1 below the guaranteed availability A1 will only be held liable for CUSTOMER's direct damages caused by interruptions directly attributable to a grossly negligent breach by A1 of its contractual obligations. In any case, sums which may be claimed by the CUSTOMER to repair damages suffered over a period of twelve (12) months, shall not exceed in the aggregate three (3) months of the monthly recurring charges.

Each Party shall only be liable for damages directly resulting from a breach of its obligation hereunder. Accordingly, each Party shall in no event be liable for any lost profit, indirect, incidental, consequential, punitive, special and moral damages.

A1 shall not be liable for, and CUSTOMER shall hold A1 harmless from, any damages suffered by a third party, including but not limited to any subscriber of the Service.

Except for content offered by A1 A1 shall not be liable for the content transmitted by the Service. CUSTOMER shall hold A1 and the satellite provider harmless from any action, injunction, allegation, or proceeding brought by any subscriber of CUSTOMER or any third party, including inter alia by any competent national or international authority, based on the information and/or content transmitted.

## **18. Compliance and Governing Law**

Contracts based on these General Conditions shall be construed under governed by and enforced in accordance with the laws of Austria provided, however, that the Parties expressly waive the application (a) of all provisions on international private conflict law and of the provisions of the United Nations Convention on Contracts for International Sale of Goods. The Parties will comply with applicable provisions fighting corruption, cartels and money laundering as well as with applicable provisions on data protection, embargos and sanction programmes.

## **19. Dispute Resolution and Venue**

All disputes arising out of or in connection with any contract hereunder shall exclusively be decided by the Commercial Court of Vienna, Austria.

## **20. Severability**

If any provision is held to be invalid or unenforceable, this shall not affect the validity of the remaining provisions. The Parties shall replace any invalid or unenforceable provisions by a valid and enforceable provision which closest reflects the meaning and purpose of the invalid or unenforceable provision.

No agreement between the Parties shall be understood in such a way that a Party would have to breach any applicable provision fighting corruption, cartels or money laundering or any applicable provision on data protection, embargos or sanction programmes.

## **21. No Exclusivity**

Nothing herein shall be deemed to restrict or prejudice the rights of either Party to enter into any agreements with any third party.

## **22. Notices**

All Notices shall be in English and made in writing or by fax or email. Notwithstanding, a Notice sent to A1 may be made in German. A Notice shall be duly served and received if

- delivered by courier, at the time of actual delivery;
- sent by prepaid recorded delivery mail 5 days after the day of posting
- sent by fax during business hours of the recipient Party, upon its receipt being confirmed;
- sent by fax after business hours of the recipient Party upon its receipt being confirmed, however, no sooner than on the following Working Day of the recipient Party;
- sent by email upon its receipt being confirmed

Notices to A1 in matters of payment and/or billing shall be sent to the contact set out in A1's invoice. Notices to A1 in all other matters shall be sent to:

A1 Telekom Austria Aktiengesellschaft  
Wholesale Media and Broadcast  
Obere Donaustraße 29, 1020 Vienna, Austria